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SUPREME COURT, U.S.

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982
. . . . . .

NO. 82-1135

W.J. ESTELLE, JR.,

Petitioner

VS

CARL EDWIN WIGGINS

Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 45 of the Rules of this Court, Motion is hereby made that the Respondent be allowed to proceed in forma pauperis before this Court for the reasons stated in the attached affidavit. Leave to proceed in forma pauperis has been sought in the Court below and granted.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion was mailed to the Office of the Attorney General of Texas, at P.O. Box 12548, Austin, Texas 78711, on this the 25th day of January, 1983.

RESPECTFULLY SUBMITTED

Carl Edwin Wiggins

Carl Edwin Wiggins, Respondent
P.O. Box 32 - 241697
Huntsville, Texas 77340

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

NO. 82-1135

W.J. ESTELLE, JR.,
Petitioner

VS

CARL EDWIN WIGGINS ,
Respondent

A F F I D A V I T

I, Carl Edwin Wiggins, being first duly sworn according to law, depose and say, in support of my Motion For Leave to proceed without being required to prepay costs of the fees:

(1). I am the Respondent in the above entitled case.

(2). I am presently incarcerated in the Texas Department of Corrections and have no means of obtaining money to pay the costs or fees involved in this case that has been initiated in this Court by the Petitioner.

(3). I have no savings and because of my poverty I am unable to pay the costs of this cause.

(4). I am unable to give security for the same.

(5). I believe I am entitled to the redress I seek.

(6). I was forcefully and fraudulently convicted of a crime that I did not commit.

(7). The nature of this case is briefly stated as follows:

I was arrested at my home in Corpus Christi, Texas on February 20, 1972, and charged with the alleged offense of robbery that allegedly occured in San Antonio, Texas, on January 17, 1972. Subsequently, after being held in the Bexar County Jail for 3 months, the charge was dismissed and I was released. I then set out to file suit against certain parties involved in my arrest and imprisonment, because of the tremendous amount of damages caused my family; my wife who was seven months

pregnant and had to be hospitalized; and the fact that I was not guilty of any offense whatsoever. Consequently I was rearrested and placed in jail again and again charged with the same offense. From that point I was kept in jail for more than two (2) years, despite my pleas for a speedy trial, and was indicted and reindicted a total of four (4) times on the same charge. On March 23, 1973, the charge was again dismissed and I was ordered released. I was not released, however, but was placed back in jail and the following week I was presented with two (2) more indictments charging the same alleged offense. During the course of these prosecutions several court appointed lawyers were forced on me, against my will, who openly acted to undermine my efforts to defend from the accusation. I learned as early as November, 1972, that the lawyers were deliberately working to assist the prosecution under pretense of "defense counsel." I testified at two pre-trial hearings about the conduct of these lawyers, December 7, 1972 and January 11, 1973, and asserted my right to defend myself without any lawyers. The trial judge ruled that I was going to have the lawyers whether I liked it or not. I was convicted only because I was deprived of defense witnesses; the State failed to process my subpoena applications; and because the lawyers, under pretense of "defense counsel," actively assisted the prosecution and interfered with my efforts to defend myself. One of the two lawyers forced on me entered my case for the first time on the same day trial started. It was this lawyer who interfered so much during trial. I had never seen him in my life until the day trial started.

After conviction I gave notice of appeal and pleaded that no lawyer represent me on appeal; that I be allowed to prosecute my own appeal. About a year later, after much difficulty trying to obtain a record, I filed my appeal brief. A month after I filed my own appeal brief, a court appointed lawyer

filed a brief "On behalf of the Appellant." The Court of Criminal Appeals, within ninety days of filing the briefs, treated the court appointed lawyers' brief as representation of my appeal; ignored the grounds raised in my brief; and affirmed the judgment. This procedure completely nullified my appeal to the Texas Court of Criminal Appeals.

Finally, without any lawyers, I returned to the State courts with applications for writ of habeas corpus, reurging the grounds, and all such applications were denied without hearing and without written opinions. In July, 1975, I filed a petition for writ of habeas corpus pursuant to Title 28 USC 2254, etc., in the United States District Court for the Western District of Texas, San Antonio Division, raising, among other grounds, the forced court appointed lawyer issue, and in 1977, Judge D.W. Suttle of that court issued an order of recusal which resulted in my case being transferred to Judge John Wood. Judge Wood dismissed that petition "for failure to exhaust state remedies" in August, 1977. I returned to the state courts with additional applications for writ of habeas corpus, urging again the same issues, and was cited for "abuse" of the writ. A Petition For Writ of Certiorari was requested from this Court and denied as Number 78-5151 in November, 1978. Then I filed a second petition for writ of habeas corpus pursuant to Title 28 USC 2254 in the United States District Court for the Southern District of Texas, Houston Division, and that petition was transferred, with suggestion for hearing, to the Western District in San Antonio, Texas and docketed there as No. SA-79-CA-128. The Petition was denied without a hearing and appeal was taken to the United States Court of Appeals for the Fifth Circuit; docketed as No. 80-2278. On July 26, 1982, a three Judge Panel reversed the judgment and the Respondent filed for this Court's review in a petition for writ of certiorari to which I now must respond.

Carl Edwin Wiggins

Carl Edwin Wiggins, Affiant

STATE OF TEXAS)
)
COUNTY OF WALKER)

The foregoing duly witnessed and sworn to before me, a NOTARY PUBLIC, on this 25th day of January, 1983.

Michael W. Flanagin
NOTARY PUBLIC IN AND FOR
WALKER COUNTY, TEXAS

MICHAEL W. FLANAGIN
NOTARY PUBLIC
WALKER CO. TEXAS
COMMISSION EXP. DATE 12/4/84

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* * * * * * * * * * * * * * * * * *

NO. 82-1135

W.J. ESTELLE, JR.,
Petitioner

VS

CARL EDWIN WIGGINS,
Respondent

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENT ON JURISDICTION

CARL EDWIN WIGGINS, Pro Se
P.O. Box 32 - 241697
Huntsville, Texas 77340

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PREFACE

The Petitioner, W.J. Estelle, Director of the Texas Department of Corrections, was the Appellee in the United States Court of Appeals for the Fifth Circuit. The Respondent, Carl Edwin Wiggins, was the Appellant in the Fifth Circuit Court of Appeals. In this brief, the parties will be referred to as they appear before this Court.

The symbol "App" will be used to designate portions of the Appendix filed with the petition. Pursuant to U.S. Supreme Court Rule 34 (2) the Respondent will show the Court the following inaccuracies or omissions in the statement by the Petitioner:

In "Statement of the Case," 2nd paragraph, page 3 of the petition, the following is stated:

> "Several months later, however, he requested the appointment of counsel. Although counsel was then appointed and timely filed an appellate brief, Respondent also filed a one hundred fifty page appellate brief."

The Petitioner fails to correctly place the pertinent facts in proper perspective: Respondent's request for assistance was made only for the limited purpose of obtaining the record for appeal. Subsequently, that Court appointed lawyer filed an appeal brief, on his own inititive AFTER the Respondent filed his one hundred fifty page brief. This action effectively nullified the Respondent's appeal brief.

In "Statement of the Facts," 1st paragraph, page 4 of the petition, the following is stated:

> "On April 16, 1973, Respondent filed a request for appointed counsel prior to his second trial, specifically stating that he wished to rescind his earlier waiver of counsel." And further on in the same paragraph: "On May 26, 1973, however, he filed an additional request for counsel."

The records clearly reflect that the April 16, 1973, request for assistance of counsel was for a specifically named attorney, Mr. Stewart Alexander, who had earlier indicated concern about the injustice surrounding the Respondent's prosecutions in Bexar County, Texas. After Mr. Alexander had voluntarily came to the jail and talked to the Respondent, the request for assistance, the petitioner refers to, was made. Consequently, Mr. Alexander was not appointed, but other counsel named Benjamin Sample was. The May 26th request was, as is reflected in the record, for some counsel to prepare a memorandum of law on the multiple (4) indictment, prosecution, procedure the state was utilizing against the Respondent in Bexar County, Texas. This second attorney, Norvell Graham, entered the case for the first time on the same day trial started and forcefully interferred with the Respondent's efforts to conduct his defense. At no time did Mr. Graham even mention a memorandum of law, or the illegal circumstances on which the Respondent based his request for the "assistance of counsel" the Petitioner refers to.

In "Statement of Facts,"pages 5 and 6, of the petition, it is alleged: "Respondent specifically approved of counsel's actions.. accepted the assistance and aid of his standby counsel... and specifically adopted counsel's objections." The Petitioner's allegations are untrue. The records do not reflect any such approvals, acceptance or adoptions of counsel's actions during Respondent's trial. Had the Respondent been afforded an evidentiary hearing in the District Court below; and the Respondent did file pleadings for a hearing early in the proceedings; these matters, as well as other important questions, could have been cleared up and facts established for the record. Unfortunately, the District Court below failed to order a hearing.

The Petitioner has included in the Appendix the Magistrate's

"Report and Recommendation" to the District Court below, which initially, and erroneously, disputes Respondent's claims of interference by the forced counsels. Please see "App" C-4. But that same Magistrate, in his subsequent report, corrected himself. The Petitioner failed to point this out for the Court. The following is verbatim from the Magistrate's corrected finding and appears on pages 000291, 292 in the "Record On Appeal" in the Fifth Circuit.

> "As Petitioner here was tried in June of 1973, he clearly had the right to defend himself without interference from either the court or court appointed counsel."
>
> "In the case at bar, Petitioner clearly and unequivocally made known his desire to defend himself, without the assistance of counsel. Nevertheless, the trial judge refused to dismiss his court appointed attorneys, and instead allowed counsel to remain at the counsel table and to participate in the proceeding against petitioner."

(Quoted directly from the record).

The above inaccuracies and omissions create a first impression that is extremely misleading from the facts; erroneously makes it appear the Respondent was vacilating on the question of self-defense and attempts to define interference as "assistance."

REASONS FOR DENYING THE WRIT

The Petitioner seeks to invoke the Certiorari jurisdiction of this Court pursuant to Title 28, U.S.C., 1254(1). A review on Writ of Certiorari, however, is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. U.S. Supt. Ct. Rule 17; Fay v. Noia, 372 U.S. 391 (1963). The "special and important reasons" contemplated by the Rule relate to problems beyond the academic or episodic and those which reach constitutional dimensions. Certiorari should not be granted except in cases involving principles, the settlement of which, is of importance to the public, as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Courts. Rice v. Sioux City Memorial Parks Cemetary, 349 U.S. 70 (1955).

This case satisfies none of the criteria established for invoking this Court's jurisdiction. Only a minuscule number of citizen-defendants can be effected by it. It creates absolutely no conflict of precedent and is, in fact, entirely consistent and expressly in accord with the principles set forth in this Court's Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.2d. 2d 562 (1975). In more ways that one this Court has indicated that under no circumstances may a state force a lawyer upon an unwilling defendant:

> "No State or Colony has ever forced counsel upon an accused; no spokesman has ever suggested that such a practice would be tolerated, much less advisable." (Faretta, supra at page 26, sl.op.).

In United States v. Price, 474 F.2d 1223, 1227, (9th Cir. 1973), it was held that a trial court may appoint counsel to be present and prepared to give advice in a case where the defendant has elected to defend himself, but that such counsel "may not interfer with the defendant's presentation of the case and may give advice only upon request."

In the case at bar the defendant clearly and unequivocally elected to defend himself in his trial, without counsel. "Nevertheless, the trial judge refused to dismiss his court appointed attorneys, and instead allowed counsel to remain at the counsel table and to participate in the proceeding against the petitioner" (Defendant). As noted by the unanimous opinion by the Fifth Circuit:

> "In addition to making objections too numerous to cite, counsel on several occasions cursed, argued with the defendant, and moved for mistrial against the defendant's wishes." Please see "App" B-6 & 7.

The appeals court held that in cases in which a defendant has been granted the right to proceed pro se but standby counsel has been appointed, interference with defendant's right of self-representation by court-appointed standby counsel may be harmless error, but that the burden of showing harmless error, under such circumstances is a heavy one and rests on government. The Court found, upon examination of the record as a whole, it was not harmless error where "counsel continuously objected, and on several occasions moved for mistrial, despite defendant's repeated requests that he play a more passive role; defendant and standby counsel were in constant disagreement over basic strategy, and at one point counsel cursed in front of jury." Please see first paragraph of "App" B-18.

The Petitioner apparantly takes the position that <u>any amount</u> of interference by a standby counsel, construed by petitioner as "assistance," would not impair one's constitutional right to defend himself, without counsel, in an adversary trial, indicating such unwanted activity by forced counsel does not deny the defendant a "genuine opportunity" to defend himself. In f.n. 4, page 21, of Appellee's brief to the Fifth Circuit, the following is stated:

> "Petitioner makes some general allegations that the transcription of the court reporter's notes were altered, to delete portions of the record which would show that counsel participated in the trial to a greater extent that the record reflects. This allegation, even if credible, fails to state a claim for relief, since even if true, this allegation is insufficient to show that Petitioner was deprived of the right and opportunity to defend himself."

(Unquote). The implication of the Petitioner's theory of a "genuine opportunity" is that no matter what, or how much, the court appointed attorney participates (interfers) in a trial involving a "Pro Se" defense, the defendant nevertheless enjoyed his right to defend himself without counsel. Its a ridiculous conception of the meaning of such a fundamental right as the right for one to defend himself from an accusation is. No where in Faretta, supra, or any other opinion on the issue of self-defense, is it suggested a defendant is entitled to only what may be construed differently in different jurisdictions a "genuine opportunity" to conduct a pro se defense. The Supreme Court's adoption of a "genuine opportunity" rule, requested by the Petitioner, would obviously create a great deal of confusion within the judiciary.

The essence of Faretta was succinctly stated:"

> "The Sixth Amendment does not provide merely that a defense shall be made for the accused; it grants to the accused personally the right to make his defense... The right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails."

Faretta v. California, 422 U.S. 820-21, 95 S.Ct. 2533-34.

The decision of the unanimous panel of the United States Court of Appeals for the Fifth Circuit, is eminently correct and certiorari should be denied.

CONCLUSION

This case involves no important question of Federal law. The decision of the United States Court of Appeals creates no conflict of precedent whatsoever. It is, in fact consistent with this Court's decisions cited in the opinion by the Court of Appeals. There are no important reasons to disturb the decision by the Court of Appeals. This Court's writ of certiorari should not issue.

RESPECTFULLY SUBMITTED

Carl Edwin Wiggins

Carl Edwin Wiggins, Pro Se
P.O. Box 32 - 241697
Huntsville, Texas 77340

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing response to the Petition for writ of certiorari has been served by mailing same, postage prepaid, to Ms. Leslie Benitez, Assistant Attorney General, State of Texas, P.O. Box 12548, Austin, Texas 78711, and also a copy of same addressed to: Mr. Craig Smyser, Attorney at Law, 3100 first City Tower, Houston, Texas 77002, on this the 29th day of January, 1983, and that all parties required to be served have been served.

Carl Edwin Wiggins

Carl Edwin Wiggins,
Box 32 - 241697
Huntsville, TX 77340

SUPPLEMENTAL FACTUAL BACKGROUND

Pursuant to the Criminal Justice Act the United States Court of Appeals for the Fifth Circuit appointed Mr. Craig Smyser in May 1981 to represent Mr. Wiggins on appeal from the denial of Mr. Wiggins' petition for writ of habeas corpus by the United States District Court for the Western District of Texas. Promptly thereafter, Mr. Wiggins filed a Petition for Writ of Mandamus and/or Prohibition in the United States Supreme Court requesting that Judge Thomas Gibbs Gee's appointment of Mr. Smyser be vacated. The United States Supreme Court declined to vacate the appointment.

By letter of June 3, 1981, Mr. Wiggins requested that Mr. Smyser file a brief in the United States Supreme Court in support of Mr. Wiggins' petition to have Mr. Smyser removed as his counsel; Mr. Smyser said he would file such a brief if it was permitted. On June 23, 1981, after a conversation with Mr. Frank Lorson, Mr. Smyser determined that the United States Supreme Court would not accept a brief in connection with Mr. Wiggins' Petition and so informed Mr. Wiggins. On October 5, 1981, the United States Supreme Court denied Mr. Wiggins' Petition for a Writ of Mandamus and/or Prohibition.

Mr. Wiggins also applied to the United States Court of Appeals for the Fifth Circuit to appear before that Court in oral argument. On May 26, 1981, the Fifth Circuit overruled that request. Mr. Smyser subsequently prepared a brief which he filed in the United States Court of Appeals for the Fifth Circuit on February 2, 1982.

The Fifth Circuit scheduled oral argument for April 22, 1982. Mr. Wiggins requested that Mr. Smyser read a statement authored by Mr. Wiggins during oral argument before the Fifth Circuit. Mr. Smyser concluded his oral argument before the Fifth Circuit with this statement, and this statement appeared as a footnote in the Fifth Circuit opinion Wiggins v. Estelle, 681 F.2d 275, n.29 (5th Cir. 1982).

On July 26, 1982, the Fifth Circuit reversed the district court's denial of the writ of habeas corpus. Wiggins v. Estelle, 681 F.2d 216 (5th Cir. 1982). On November 8, 1982, the Fifth Circuit denied Estelle's petition for rehearing and suggestion for rehearing en banc. Wiggins v. Estelle, 691 F.2d 213 (5th Cir. 1982). On February 22, 1983, this Court granted writ of certiorari.

Although Mr. Smyser is not yet a member of the Bar of the United States Supreme Court, he will be eligible and will move to become a member in November 1983. He is a civil trial lawyer with Vinson & Elkins in Houston and has tried more than a dozen cases. In addition to his appellate work on this case, he has appealed three state court matters, one to the Supreme Court of Texas, and has submitted written briefs to Administrative Law Judges in several cases tried under the Longshore and Harbor Workers' Compensation Act. He is co-editor and author of the Texas Association of Defense Counsel's Medical Malpractice Newsletter.

Mr. Smyser graduated from the University of Texas Law School, where he was a member of the Texas Law Review and author of "Protecting the Public Debate: A Proposed Constitutional Privilege of Accurate Re-publication" appearing in 58 Texas L. Rev. 623 (1980). He was chairman of the Moot Court Board at the Law School, member of the National Moot Court Team, winner of several briefing awards in intramural moot court competition, and winner of the International Academy of Trial Lawyers Award as the outstanding advocate in his law school class. In addition, he received the highest grade in his law school Constitutional Law Seminar.

Before attending law school, he was a reporter on the Houston Chronicle for four years. He graduated cum laude from the University of Texas and is a member of Phi Beta Kappa. Since the Fifth Circuit appointed him, he has endeavored to represent Mr. Wiggins according to the highest standards of the law. To date, he has spent more than 230 hours working on this case.

VINSON & ELKINS
ATTORNEYS AT LAW
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RECEIVED
MAR 3 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

March 2, 1983

Mr. Frank Lorson
Office of the Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Re: No. 82-1135; W. J. Estelle, Jr. vs.
Carl Edwin Wiggins

Dear Mr. Lorson:

Pursuant to your request in our telephone conversation of March 2, 1983, I write to inform you that I stand ready to serve the United States Supreme Court in any capacity the Court deems appropriate in connection with the case referenced above.

As you know, Respondent Carl Edwin Wiggins has filed a Motion for Appointment of Counsel in which he requests that the Court appoint any lawyer outside the State of Texas to represent him. Under these circumstances, I do not think it appropriate for me to file a motion requesting that I be appointed as counsel for Mr. Wiggins. Nonetheless, as I indicated, while I am not seeking the appointment in view of Mr. Wiggins' feelings on this matter, I am an officer of the Court, and I will discharge to the best of my ability any duties the Court may request me to perform. Moreover, I consider it an honor to serve the Court in any capacity. Also, as you requested, I attach a brief statement concerning the history of this case and my personal background.

I will be glad to assist in any way in the development and the presentation of this case to the Court, whether it be as Mr. Wiggins' appointed counsel or as an aid to any other court-appointed attorney who needs to master the

record in this case. If I can be of any other assistance or if you have any questions, please call me at (713) 651-2730.

Very truly yours,

VINSON & ELKINS

By: Craig Smyser
Craig Smyser

498:2225
Attachment
cc: Mr. Carl Wiggins
Box 32 - 241697
Huntsville, Texas 77340

Ms. Leslie Benitez
Assistant Attorney General
P. O. Box 12548
Austin, Texas 78711

RECEIVED
MAR 3 1983

Mr. Craig Smyser,
Attorney At Law
VINSON & ELKINS
3100 First City Tower
Houston, Texas 77002

February 28, 1983

Re: Motion For Appointment of Counsel - Cert. 82-1135

Dear Mr. Smyser:

This is a followup letter from the mailing of the motion for appointment of counsel.

Today I received from the mailroom the papers (your motion for appointment of counsel, which I refused to sign on Saturday upon delivery by the Courier) and your letter of explanation. Prior to this I had already prepared my own motion for appointment of counsel, requesting specifically any counsel outside of Texas to represent me in the U.S. Supreme Court. Even though I cannot criticize anything you did; and the great amount of gratitude I feel; I could never feel at ease with <u>any</u> lawyer in the State of Texas representing me. I accepted your representation because the Supreme Court denied my petition for writ of mandamus/prohibition. If you, or any other Attorney in Texas, is appointed by the court to represent me in this certiorari proceeding, then I will accept such representation and cooperate to the best of my ability. But my preference is, as indicated in my motion, counsel outside of the State of Texas. The background of this conviction represents justification for my reasons.

I want to assure you that I struggled with the decision; I prayed about it more than once. Your personal feelings; how you may be personally effected; was no small matter for me. But all things considered, I had to follow the dictates of my own reasoning. Please forgive me if I offended you.

Sincerely yours,

Carl Edwin Wiggins,
Box 32 - 241697
Huntsville, TX 77340

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MAR 9 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

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AUSTIN NATIONAL BANK TOWER
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TELEPHONE 512 478-9500

March 8, 1983

Miss June Hoffman
Office of the Clerk
United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

Re: No. 82-1135; W. J. Estelle, Jr. vs.
Carl Edwin Wiggins

Dear Miss Hoffman:

Pursuant to the specific telephone request of Mr. Frank Lorson, I enclose a copy of a letter Mr. Carl E. Wiggins wrote me subsequent to his filing his Motion for Appointment of Counsel.

As you probably know from Mr. Lorson, although Mr. Wiggins has written me on numerous occasions to express his satisfaction with my representation of him, I have been reluctant to send any of this correspondence to the Court. Thus, while I send on Mr. Wiggins' most recent letter, I still feel it would be improper to forward any of our earlier correspondence. To the extent, however, that the letter requested by Mr. Lorson may assist the Court in evaluating the motions presently before it, I accede to his request. I repeat that I would be honored to represent Mr. Wiggins before the Court or to serve the Court in any other capacity it desires.

As always, I appreciate the attention you and Mr. Lorson have given this matter. If I can be of any further service, please call me at (713) 651-2730.

Very truly yours,

VINSON & ELKINS

By: Craig Smyser
Craig Smyser

498:2225
Enclosure

RECEIVED
MAR 3 1983
OFFICE OF THE CLERK
SUPREME COURT, U.S.

OFFICE OF THE CLERK,
Supreme Court of The United States
Washington, D.C. 20543

February 28, 1983

Re: Estelle v. Wiggins, Certiorari No. 82-1135, granted 2-22-83 - Respondent's Motion For Appointment of Counsel

Dear Sir:

Herewith is my motion for appointment of counsel in the Cause styled and numbered above.

Will you please file this and bring to the attention of the court at your earliest convenience.

Thank you for your kind assistance.

Respectfully yours,

Carl E. Wiggins

Carl Edwin Wiggins,
Box 32 - 241697
Huntsville, TX 77340

cc: Attorney Ceneral's Office
P.O. Box 12548
Austin, TX 78711

Mr. Craig Smyser,
Attorney At Law
3100 First City Tower
Houston, TX 77002

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IN THE
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October Term, 1982

NO. 82-1135

W.J. ESTELLE, JR.,
Petitioner
VS
CARL EDWIN WIGGINS,
Respondent

RESPONDENT'S MOTION FOR APPOINTMENT OF COUNSEL

TO THE HONORABLE CHIEF JUSTICE OF THE SUPREME COURT:

RESPONDENT, Carl Edwin Wiggins, in the above styled and numbered Cause, requests appointment of counsel to represent him in this court pursuant to Supreme Court Rule 46, .6 and .7; and the Criminal Justice Act of 1964, as amended (18 U.S.C. 3006A). Respondent would show the following:

I

This court granted the petition for writ of certiorari in this Cause on the 22nd day of February, 1983.

II

The Respondent is an indigent prisoner of the Texas Department of Corrections and has been allowed to proceed in FORMA PAUPERIS in the courts below.

III

The Respondent is not represented in this Cause by counsel who has been admitted to practice in this court.

IV

Present counsel was appointed by the Court of Appeals For the Fifth Circuit, and represented Respondent in that court only

after this court denied Respondent's "Petition For Writ of Mandamus, or Prohibition," which sought to dispense with counsel in the appeal. (Please see In Re: Carl Edwin Wiggins, S.Ct. No. 80-6700, denied Oct. 5, 1981). During the proceeding in the Court of Appeals, the Respondent's Court appointed counsel made the following pertinent statement in a letter to the Respondent on November 11, 1982:

> "Needless to say, if the Supreme Court granted the writ of certiorari, I think it would be very bad for our chances. The Supreme Court as it is constructed has handed down a number of opinions restricting the rights of defendants and favoring the conduct of the State and the prosecution. Therefore, I think the initial disposition of the Court would be in favor of the State of Texas' position and against ours."

(Unquote).

Respondent's present counsel has acknowledged that he is not qualified to practice in the Supreme Court of the United States. Consequently, he has selected a member of the firm for which he works, who is qualified, to represent the Respondent. This amounts to an attorney, whose appointment was opposed by the Respondent at the outset;[1/] and who has not yet gained his admission to the Supreme Court Bar; and who has indicated a generally negative attitude toward this court's review of this case; deciding, by the measure of his mind, the appointment of counsel who would represent the Respondent in this court. The Respondent submits he is entitled to have such an important appointment made by the Justices of the Supreme Court. Accordingly, the Respondent respectfully requests this Honorable Court to appoint coursel to represent him in this Cause.

V

The Respondent acknowledges that he does not have the right to a particular counsel of his choice, but would

---

1/ This is not to say the Respondent is unappreciative for the good work counsel subsequently did in the Court of Appeals.

respectfully request , and humbly pleads, the appointment of any qualified Attorney outside the State of Texas.

VI

PREMISES CONSIDERED, Respondent Carl Edwin Wiggins, Prays this Honorable Court will appoint Counsel to represent him in this Court in Cause number 82-1135.

RESPECTFULLY SUBMITTED,

Carl E. Wiggins

Carl Edwin Wiggins,
P.O. Box 32 - 241697
Huntsville, TX 77340

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and correct copy of the foregoing motion for appointment of counsel was mailed, postage prepaid, to the Office of the Attorney General for Texas, at P.O. Box 12548, Austin, Texas, 78711; and to Respondent's Counsel of record; on this the 28th day of FEBRUARY, 1983; and that all parties required to be served have been served on this date.

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